IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 805 OF 2005

Prakash Ramrao Salunkhe ... Appellant
(Ori.Plaintiff No.2)

V/s

Shri Baban Janu Yamkar & ors. ... Respondents

Mr. A.K. Moily for the appellant.

Mr. B.K. Raje for the respondent No.5.

CORAM: P.V. KAKADE, J.

DATED: 23RD AUGUST, 2005

P.C.:

1. The appellant has filed this appeal against the judgment and order passed by the Addl. District Judge, Karad, dated 13.7.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Patan dated 21.1.1993 dismissing the plaintiffs' suit for perpetual injunction simplicitor.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs filed the suit submitting that the

suit land belongs to Nana Tukaram and Pandurang Tukaram. They used to cultivate the suit land. However, on 20.4.1988 the suit land was purchased from them by the plaintiffs as per the sale deed and as per the sale deed their names were mutated to the revenue record of the suit land. According to them, the defendants are not concerned with the suit land. However, as the suit land is sold to the plaintiff by the original owner, the defendants got annoyed and obstructed their possession over the suit land. Hence the suit was filed.

Defendants contested the suit on the contention that Thorat Brothers were lessee of government over the suit land. However, they were never in possession of the suit land and the sale deed dated 21.4.1988 executed in favour of the plaintiffs by Thorat Brothers was illegal and after execution of the sale deed dated 21.4.1988 the plaintiffs have got mutated their names to the revenue record of the suit land in collusion with revenue authorities and, as such, there is no question of obstruction from them to the possession of the plaintiffs as the plaintiffs were never in possession of the suit property and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on

merits and came to the conclusion that the plaintiffs have failed to prove title and exclusive possession over the suit land on the basis of sale deed dated 21.4.1988 and hence the suit came to be dismissed.

The appeal was carried to the Court of Additional District Judge, Karad. The learned Addl. District Judge, after hearing both parties, dismissed the appeal on merits and hence the present appeal is filed.

5. At the outset, it may be noted that, there is absolutely no substantial question of law involved in this appeal. The rival contentions involved in this dispute are in respect of the legal status of the suit land. It is quite evident from the record that Nana Tukaram and Pandurang Tukaram brothers, who are said to have sold the suit property to the plaintiffs by sale deed dated 21.4.1988 had no right, title, interest to transfer the suit property as they were lessee of the State Government in the land and, as such, Thorat Brothers could not have transferred the property to the plaintiffs. Moreover, there is absolutely no evidence to show that the factual position of the leased property was handed over to the plaintiffs except from the fact that their names were mutated in the revenue record.

However, mutation entries would be sufficient to show that they were in possession of the suit property and hence both the Courts below have concurrently recorded the findings to the effect that the plaintiffs have failed to prove their lawful possession over the suit property and, as such, the suit for perpetual injunction against the defendants came to be dismissed.

6. In view of this factual matrix, there is absolutely no question of interference in the concurrent findings recorded by both the Courts below and hence the appeal deserves to be dismissed and stands dismissed with no order as to costs.

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